

time limitation is severely circumscribed. Endicott Johnson Corp. v. Liberty Mut. Ins. Co., 116 F.3d 53, 56 (3d Cir. 1997). The district court, however, may extend the time to file a notice of appeal if the party shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5). The excusable neglect standard applies in a situation in which the need for an extension is caused by something within the movant's control. The good cause standard applies in situations in which the need for an extension is caused through no fault on the part of the movant. Rule 4, Fed. R. App. P., Advisory Committee Notes, Subdivision (a)(5)(A)(ii).

The governing standard for Plaintiff's motion is "excusable neglect" because his need for an extension was caused by something within his control, i.e., his failure to make himself aware of an applicable court rule. (dkt. no. 23, filed on Jan. 8, 2008.)

Factors that the court will consider in evaluating excusable neglect include: "[1] the danger of prejudice to the [non-movant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within reasonable control of the movant, and [4] whether the movant acted in good faith." Sullivan, 333 F.3d at 366 (citing Pioneer

Inv. Serv. Co. v. Brunswick Assocs. P'Ship, 507 U.S. 380, 395).

Usually, the first, second and fourth of the Pioneer factors weigh in favor of the movant for the following reasons. Prejudice to the non-moving party will be negligible, and delay will be minimal because Rule 4(a)(5) requires a motion for extension of time to file notice of appeal be filed within 30 days of the last day possible for filing a notice of appeal. In addition, it is rare in such situations that there is an absence of good faith. Therefore, it is, necessary to scrutinize the third factor of the Pioneer test: the reason for the delay. Silivanch, 333 F.3d at 366

The Supreme Court characterizes excusable neglect as an "elastic concept" which implies that a determination "is at bottom an equitable one, taking account of all relevant circumstances of a party's omission." Pioneer, 507 U.S. at 392, 395. Such considerations, however, will "rarely if ever favor a party who fails to follow the clear dictates of a court rule." Silivanch, 333 F.3d at 366. Where the court rule is entirely clear, a party claiming excusable neglect will ordinarily fail under the Pioneer test. Bass v. NYNEX, No. 02 Civ. 5171, 2004 U.S. Dist. LEXIS 23703, 2004 WL 2674633, at *6 (S.D.N.Y. Nov. 23, 2004) (citing

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Plaintiff's motion must be denied because he has not made a showing of excusable neglect or good cause. Plaintiff's motion relies on the failure of his attorney to notify him of the requirement to file a notice of appeal within thirty days of the judgment. The thirty day limit to file notice of appeal, however, is a clear court rule and, as such, Plaintiff's failure to make himself aware of it cannot be categorized as excusable neglect.

The Plaintiff's motion to extend time to file an appeal is denied.

SO ORDERED:

Dated: New York, New York
January 23, 2008


LORETTA A. PRESKA, U.S.D.C.